



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERUGOYA**  
**CIVIL APPEAL NO E059 OF 2025**

NICHOLUS

WACHIRA

KARIUKI.....APPELLANT

VERSUS

JOSEPH      MWAMBUI      MWANDAGA      .....  
RESPONDENT

**JUDGMENT**

1. The appeal is purely on the quantum of damages awarded by the trial court for the injuries suffered by the Respondent upon a road traffic accident. The Memorandum of Appeal dated 12<sup>th</sup> May, 2025 sufficiently the grounds of appeal as follows:
  1. *THAT the learned Magistrate erred in law and in fact in awarding general damages at Ksh. 4,000,000/= which amount is manifestly excessive considering the injuries sustained by the respondent.*
  2. *THAT the learned Magistrate erred in law and in fact in awarding general damages for future medical expenses of Ksh.200,000/- considering the same was not pleaded in the plaint.*
  3. *THAT the learned Magistrate erred in law and in fact assessing general damages and failed to apply the applicable principles in the award of general damages and comparable awards made in similar cases leading to a manifestly high and excessive awards.*
  4. *THAT the learned Magistrate erred in law and in fact in awarding special damages at Ksh. 402,000/- which amount is manifestly excessive considering there were payments that were not made by the Respondent.*

5. **THAT** learned Magistrate erred in law and in fact in failing to consider the Appellant's written submissions on record and the authorities annexed therein while driving at the award in general and special damages.
6. **THAT** the learned Magistrate erred in law and fact by failing to properly consider and evaluate the evidence before her and the law and arrive at a decision in favour of the appellant.

It is proposed to ask this Honourable Court for **ORDERS THAT**

- a. The appeal herein be allowed and Judgment of the lower court be set aside.
  - b. The court sets aside the award of general damages and substitute the same with a fresh assessment.
  - c. The court sets aside the award of special damages and substitute the same upon a fresh assessment.
  - d. The costs of appeal be granted to the appellant.”
2. In assessing the damages, the trial court found as follows:

**“ASSESSMENT OF DAMAGES**

As a result of the accident the plaintiff sustained the following injuries.

- **Fracture of both femurs.**
- **Fracture of both ankles.**
- **Fracture of left wrist.**
- **Total left hip replacement.**
- **Laceration on the face.**
- **Re attachment of Achilles tendon.**
- **Skin grafting**
- **Mid foot osteotomy of the right side**

The plaintiff's counsel proposed an award of Ksh. 6,000,000/= relying on the case of **Benard Mutusya Wambua versus Swaleh Hashil 2017 eKLR** where the court awarded Ksh. 6,500,000/= in almost similar circumstances where the plaintiff was left with injuries that led to more than 50% incapacitation and where the defendant was found 100% to blame.

The plaintiff counsel also relied on the case of **Beatrice Anyango Okoth versus Rift Valley Railways Kenya Limited and Another 2018**

*eKLR among others where the court awarded damages for Ksh.6,500,000/=.*

*The defence on the other hand proposed an award of Ksh. 2,000,000/= relying on the case of **China Road and Bridge Corporation (Kenya) versus Job Mburu Ndungu [2021] eKLR among others** where the Appellant court upheld the trial courts award of Ksh.2,000,000/= Having considered the injuries suffered by the plaintiff herein compared to the injuries suffered by the plaintiffs in the cases and taking into account with the passage of time an award of Ksh. 4,000,000/= would suffice as adequate compensation.*

#### ***FUTURE MEDICAL EXPENSES***

*From the medical reports produced as exhibits the plaintiff suffered 50% incapacity and will require use of two crutches for the rest of his life. He has metal implants which will require removal at the cost of Ksh. 200,000/=.*

*In personal injury cases future medical expenses encompasses the anticipated costs of care and treatment an injured person may need beyond the initial injury, including ongoing treatments, surgeries, rehabilitation and assistive devices.*

*The same was not pleaded not pleaded however the medical report dated 17<sup>th</sup> July, 2018 from PCEA Kikuyu shows that the plaintiff already underwent removal of nail fixators in February, 2018 and a total left hip replacement. He was mobile on two crutches. As at 27<sup>th</sup> August, 2024 the plaintiff was still not able to walk well and used support. In the circumstances I award Ksh. 200,000/= as future medical expense.*

#### ***LOSS OF FUTURE EARNING CAPACITY***

*There was no evidence to show that the plaintiff had been in any gainful employment prior to the accident. As such no award is made under this head.*

*Special damages*

*In the case **Hahn versus Signh Civil Appeal no. 42 of 1983** the court held that*

***“Special damages must not only be specifically claimed but also strictly proven... for they are not the direct natural or probable consequence of the act complained of and may not be interred from the act. The degree and certainty and particularity of proof required depends on the circumstances and the nature of the acts themselves”***

*Special damages financial compensate the injured person for losses suffered due to the defendants’ action, special damages are out of pocket expenses that can be determined by adding together all the plaintiff’s quantifiable financial can be determined by adding together all the plaintiff’s quantifiable financial losses. However, these losses or expenses must be proven specifically. To this extend special damages pleaded and proved amounts to Ksh.402,000/= which is awarded.*

*In conclusion I enter judgment for the plaintiff against the defendant as follows:*

*Liability is assessed at 100% in favour of the plaintiff against the defendant*

- *General damages awarded Ksh. 4,000,000/=*
- *Future medical expenses Ksh. 200,000/=*
- *Loss of earning capacity – nil*
- *Special damages Kshs. 402,000/=*
- *Total award Ksh. 4,602,000/=*

*The plaintiff shall also have the cost of suit with interest thereon.*

***Read, Dated and Signed In Open Court at Wangúru This 15<sup>th</sup> Day of April, 2025***

***Before me Hon. Martha Opanga***

***PRINCIPAL MAGISTRATE***

3. Counsel for the parties filed respective submissions on the appeal dated 20<sup>th</sup> November, 2025 and 2<sup>nd</sup> December, 2025.
4. The Appellant urged that award of damages should be considerable to the injuries suffered and should be comparable to previous awards for similar injuries, citing ***Butler v. Butler (1984) KLR.225; Kiagaari v. Aya (1982 – 88) 1 KAR 768, Samia Taveta v. Mercy Mutihi Njeru (2014) eKLR and Mbaka Nguru and another v. James George Rakwar (1998) eKLR.***

5. Relying on ***China Road and Bridge Corporation (Kenya) v. Job Mburu Ndungu (2021) KEHC 8928 KLR*** and other cases, the appellant offered that an award of Ksh.2,000,000/- would be more than fair compensation for the Respondent herein in general damages for pain and suffering.
6. Appellant objected to the award of Ksh.2,000,000/- for the cost of future medical expenses which the trial court awarded for eventual removal of metal implants pointing out that the Respondent had already undergone removal of nail fixation in February, 2018 and in any event the claim for future medical expenses that had been made in the plaint, urging that parties are bound of their pleadings and citing ***IEBC and Another v. Shuke and 3 others (2014) KECA890(KLR*** Court of Appeal citing with approval Supreme court of Nigeria’s Case ***Adetoun Oladeji (Nig) Limited v. Nigeria Breweries PLC SC91/2002.***
7. It was further urged relying to the Court of Appeal decision in ***Tracom Limited and Another v. Hassan Mohammed Adan [2009] eKLR*** “that the claim for future medical expenses is a special claim within general damages and needs to be specifically pleaded and proved before a court can award it”  
It was urged that the claim for future medical expenses of Ksh. 2,000,000/- had not been pleaded and proved and it ought to be rejected.
8. As regarding special damages the Applicant submitted that the special damages of Ksh. 402,000/= which was pleaded included and admitted by the Respondent in cross – examination awards paid by the National Hospital Insurance Fund. It was urged that from the receipts supplied to the court on award of Ksh. 81,600 had been paid by NHIF, and it would amount to an unjust enrichment if paid to the Respondent. See ***John Mwangi Munyiri and Another v. Paul Wachira Njuguna (2020) KEHC 4287(KLR)***
9. Initially, the appellant relied on ***Wakim Sodas Limited v. Sammy Aritos (2017)eKLR*** to urge that Respondent had only appeared at paragraph 24 – 29 of the Road any invoices issued by the hospital without sharing any receipts for payments, and should not therefore be awarded.
10. The Respondent supported the judgment of the trial court referring to case law where awards of Ksh. 6,500,000/- and 6,000,000/- were given for injuries urged as similar to those suffered by the Respondent at 50%, 60% and 80% disability respectively in ***Benard Mutisya Wambua v. Swaleh Hashil (2017) eKLR, Beatrice Anyango Okoth v. Rift Valley Railways (Kenya) Limited and Another (2018)eKLR; Charlene Njeri***

***Kuria v. Gitu Geoffrey and Another (2016) eKLR and Emmanuel Kombe Nzai v. Bosari Company Limited and Another (2017)eKLR.***

11. The Respondent urged that he had proved the injuries by the documents including medical reports, treatment notes and discharge summaries, provided and adduced in court.
12. By analogy to the Criminal Cases principle of Appellant interference with sentences, the Respondent referred to ***Ogola s/o Owuora v. Reginum*** (1954) 21, 220 that merely because the appellate court could have passed a different sentence was no ground to interfere with the discretion exercised by the trial court unless it had acted on some wrong principle or overlooked some material factors.
13. The principles for appellant interference with discretion of the trial court in awarding damages, which this Court agrees with, in civil cases were condensed in ***Butt v Khan*** [1978] KECA 24 (KLR) as per Law, JA with whom Madan, CJ and Wambuzi JA agreed, as follows:

***“An appellate court will not disturb an award of damages unless it is so inordinately high or low as to represent an entirely erroneous estimate. It must be shown that the judge proceeded on wrong principles, or that he misapprehended the evidence in some material respect, and so arrived at a figure which was either inordinately high or low.”***

14. The principles were restated in ***Kemfro Africa Limited t/a “Meru Express Services (1976)” & another v Lubia & another*** (No 2) [1985] KECA 137 (KLR) (Kneller & Nyarangi, JJA & Chesoni, Ag. JA) as follows:

***“The principles to be observed by an appellate court in deciding whether it is justified in disturbing the quantum of damages awarded by a trial Judge were held by the former Court of Appeal of Eastern Africa to be that it must be satisfied that either that the Judge, in assessing the damages, took into account an irrelevant factor, or left out of account a relevant one, or that, short of this, the amount is so inordinately low or so inordinately high that it must be a wholly erroneous estimate of the damage. See *Ilanga v Manyoka*, [1961] EA 705, 709, 713 (CA-T); *Lukenya Ranching and Farming Co-operative Society Ltd v Kavoloto*, [1979] EA 414, 418, 419 (CA-K). This Court follows the same principles.”***

15. The plaintiff's doctor Dr. Michael Maru of PCEA Kikuyu Hospital on 17<sup>th</sup> July, 2018 put the injuries of the respondent as follows:

*“He sustained injuries to both femur, left hip, both feet, left wrist and Laceration on the face. X-rays confirmed fracture of both femur both ankles and left wrist. He underwent ORIF femur left wrist, ORIF reattachment of Achilles tender and skin grafting. Later in 2017 he underwent mid-foot osteotomy of right side, in February 2018, he had removal of nail then left total hip replacement. He is now on 2 crutches. He has pain in right thigh I award him 50% disability due to the extensive injuries he has sustained.*

16. The Respondents 'own doctor, Doctor Waithaka Mwaura in a report dated 15<sup>th</sup> February, 2023 agreed with the assessment of the plaintiff injuries and 50% disability as follows:

*“Medical report*

*Re: Joseph Mwambui Mwandaga (ID 11655082)*

*Occupation: Salesman*

*Date examined: 14<sup>th</sup> February, 2023.*

**History Given**

*Joseph affirms that he was involved in a road accident on 19<sup>th</sup> December, 2015 at Mwea and he was taken to Our Lady of Lourdes Hospital Mwea and then transferred to PCEA Kikuyu Hospital where he was admitted with a diagnosis of laceration on the face and fractures of the left wrist, left hip, both femer and both feet. He remained in hospital until 17<sup>th</sup> February, 2016. He was again readmitted on three other occasions (15-9/05 2017, 18-27/02, 2018 and 18-26/10, 2018) and underwent various major surgical operations including total left hip replacement. He still has metal implants in place.*

**Present complaints**

- Permanent scars with bone deformities.*
- Inability to squat and has to use commode.*
- Inability to be gainfully engaged.*
- Has to use two crutches for support.*

**Findings on examination**

*Joseph is a 53 year old male of sound mind and in fairly good general physical condition. He walks with the aid of two clutches for weight support. His vital signs are stable and within acceptable normal range. Examination confirms above complaints.*

**Conclusion**

*Mr. Mwandaga sustained poly trauma with multiple fractures and had to undergo various surgeries and admissions to hospital severally. He still has metal implants that my require removal/replacement at a later date at an estimated cost of shillings two hundred thousand (200,000/=). I am in concurrence with the assessed degree of residual permanent disability at fifty percentage (50%) points.”*

17. It is the Respondent own doctor Dr. Mwaura who found that the plaintiff still had metal implants which also required removal later at a standard cost of Ksh.200,000/- removal/replacement of the metal implants referred to by the Respondents doctor in letter of 15<sup>th</sup> February, 2023 is a different item from the removal of nail referred in the plaintiffs Doctor report of 17<sup>th</sup> July, 2018. The plaintiff could have pleaded if especially in the plaint if he had been awarded of this further medical cost. When it is assessed by the Respondents ‘own doctor you as examination after the filing of the suit, it would be wrong to deny this aspect of general damages because it had not been pleaded in the plaint filed before the need for the medical procedure was ascertained. The court will not interfere with the award of Ksh.200,000 for future medical expenses.
18. As refers to Hospital final invoices at pages 24-29 of the Record, it is clearly that correct as urgent by the appellant that there is no evidence of payments of the invoices. At the bottom of the invoices there is on the print out the receipts of monies paid on the each leaf complete with the receipt number and date of payments as well as applicable credit notes. The total receipts amount as shown as 10,000+18,800+200,000+45,000+50,000+5000+30,000+100,000+206,383+81,600+128,204+150,000+13,000+10,000+37,000+69,000+21,641+250,000+51,000+21,934 = 1,498,562 with a balance of Ksh. 130,000 as at 26<sup>th</sup> October, 2018.
19. On the actual receipts shown out page 30-47 a total of Ksh. 500,459/- (some copies are not legible), the court accepts that the larger amount was paid by NHIF. The court finds that special damages pleaded have been proved to the extent of Ksh.402,000/= as shown by the receipts produced.

20. As regards to general damages the consensus of medical evidence of the applicant and Respondents experts is that the plaintiff suffered injuries as follows:
- a. Multiple fractures on both femur, left hip, both feet, left wrist.*
  - b. Laceration on the face.*
  - c. He underwent several surgeries identified as ORIF femur, left wrist ORIF, attachment of Achilles tendon and skin grafting, mid foot osteotomy of right side and removal of nail then left total hip replacement and now uses 2 crutches/wheel chair.*
  - d. Degree of disability was agreed between the two doctors for the respective parties at 50%.*
21. On the principle of comparable awards for comparable injuries, and taking into account “the constant erosion of the value of money“, the court finds that the award of damages for compensation for pain and suffering and loss of amenities in this case based on the nature of the injuries suffered as **Ksh.2,500,000**. The decisions cited by the applicant indicating awards of Ksh. 2,000,000/- to Ksh.2,300,000/- are slightly on the lower side having regard that there more severe injuries in this case. The decisions cited by the Respondent had much more serious injuries, including one of partial paralysis and another of 80% disability and their awards are, therefore, not comparable awards for comparable injuries.
22. Consequently, on the test in **Butt v. Khan** [1978] KECA 24 (KLR), the Court finds that the award of general damages was excessive, and there is a basis for interference.

### **ORDER**

23. Accordingly, for reasons set out above, the Court finds merit in the appeal, sets aside the judgment of the trial court and substitutes the following awards:
1. General damages for pain suffering and loss of amenities **Ksh.2,500,000/-**
  2. Future medical expenses **Ksh.200,000/-**
  3. Special damages of **Ksh.402,000/-**
  4. Interest at court rates and costs in the trial court.
24. There shall be no orders as to costs as the appeal has only partially succeeded.

**DATED AND DELIVERED THIS 16<sup>TH</sup> DAY OF APRIL 2026.**

**EDWARD M. MURIITHI**

**JUDGE**

**Appearances:**

Mr. Kipngetich for Appellant.

Mr. Irungu Mwangi for the Respondent.